

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 14-52261

PROPER BUILDING SERVICES, INC.,

Chapter 11

Debtor.

Judge Thomas J. Tucker

**ORDER REQUIRING DEBTOR TO AMEND
FIRST AMENDED DISCLOSURE STATEMENT**

On December 1, 2014, the Court entered an order entitled “Order Requiring Debtor to Amend Disclosure Statement” (Docket # 47, the “December 1 Order”). On December 4, 2014, Debtor filed its amended plan and disclosure statement, entitled “First Amended Combined Plan and Disclosure Statement” (Docket # 49). The Court cannot yet grant preliminary approval of the amended disclosure statement contained within this document. The Court notes the following problems, which Debtor must correct.

First, the Court’s December 1 Order stated:

Fifth, the Debtor’s statement on page 1, that it will make plan payments of \$2,900.00 per month for 120 months, plus a one-time payment of \$10,000 two years from the Effective Date, is inconsistent with the total amount of the monthly payments that Debtor says it will make to the Classes and Groups, on pages 8-11. On pages 8-11, for example, during the first 90 days after the Effective Date, Debtor says that it will pay a total of \$2,900.00 in monthly payments to Classes 1 and 3 and Groups 2, 3, and 4, **plus** a total of \$8,098.77 to Group 5. Debtor must correct this inconsistency.

(Docket # 47 at 2)(emphasis in original). Debtor still has not corrected this problem, and must do so now.

Second, another problem exists relating to the Debtor’s statement on page 1 of the First

Amended Combined Plan and Disclosure Statement, that Debtor “proposes to make monthly payments of \$2,900.00 for the maximum period of one hundred and twenty (120) months, plus a one-time payment of \$10,000 two years of the Effective Date of the Plan.” (Docket # 49 at 1). This results in a total amount of payments of \$358,000 ($\$2,900 \times 120 \text{ months} = \$348,000$ plus the one time \$10,000 payment = \$358,000). Yet in the final full paragraph on page 2, the Debtor states: “Plan payments total \$381,098.77, \$10,000 of which is proposed as an offer by the current equity holder to purchase the stock of the Debtor.” (*Id.* at 2.) There is a difference between the total plan payment amounts stated on page 1 and page 2 of \$23,098.77 ($\$381,098.77$ minus $\$358,000.00$). This \$23,098.77 difference appears to consist of the payments of \$15,000 in attorney fees as stated on page 10 for Group 1 administrative claimants plus \$8,098.77 to the Michigan Department of Treasury as stated on page 10 for Group 5 claimant. Both of these payments are to be made within “90 days of the Effective Date of the Plan.” (*Id.* at 10-11). Debtor must correct this inconsistency.

Third, the Court’s December 1 Order stated:

Sixth, in order to be clear, the description of the treatment of Class 3 (non-priority unsecured creditors), on page 9, should state that the \$100.00 monthly payments to this Class will be paid to the members of this Class according to their allowed claims amounts, on a pro-rata basis.

(Docket # 47). The Debtor made this correction. But now a problem exists in the arithmetic of the description of the payments to be made to Class 3 claimants. The current paragraph on page 9 states: “Class 3 claims shall be paid in monthly installments beginning on the first month after the Effective Date of the Plan, in the amount of \$100 for a term of 36 months, and then monthly payments of \$400, beginning in the 37th month of the plan and then continuing until the 120th

month of plan, for total aggregate payments to Class 3 claimants of \$45,600.” (Docket # 49 at 9.)

This statement contains a mathematical error. The total of payments to Class 3 is \$37,200, not \$45,600 as stated in this paragraph of the Plan. ($\$100 \times 36 \text{ months} = \$3,600$; $\$400 \times 84 \text{ months} = \$33,600$; $\$3,600 \text{ plus } \$33,600 = \$37,200$). Debtor must correct this inconsistency.

Fourth, the Court’s December 1 Order stated:

Second, in paragraph (1) of Section VIII of the Disclosure Statement on page 18, the Debtor states: “At the time of giving such notice, such party or parties, including any equity interest holder, shall tender a certified check or cashier’s check in the amount of \$2,500, which amount shall be held by the Debtor’s counsel in escrow as a deposit to be applied to the payment of the amounts due under an Equity Contribution Agreement to Jennifer Wojtowicz’s offer of \$10,000 shall be considered the first bid, on the terms set forth in paragraph[.]” This sentence appears to be incomplete. Debtor must correct this sentence.

(Docket # 47 at 1-2). The current paragraph (1) of Section VII of the Amended Disclosure Statement states:

At the time of giving such notice, such party or parties, including any equity interest holder, shall tender a certified check or cashier’s check in the amount of \$2,500, which amount shall be held by the Debtor’s counsel in escrow as a deposit to be applied to the payment of the amounts due under an Equity Contribution Agreement to Jennifer Wojtowicz’s offer of \$10,000 shall be considered the first bid, on the terms set forth in paragraph I.

(Docket # 49 at 20.) It appears that the Debtor is trying to address two different subjects in this one sentence, which makes the sentence as written incomprehensible. The Court now makes an educated guess that what Debtor intends to say here is the following:

At the time of giving such notice, such party or parties, including any equity interest holder, shall tender a certified check or cashier’s check in the amount of \$2,500, which amount shall be held by the Debtor’s counsel in escrow as a deposit to be applied to the

payment of the amounts due under an Equity Contribution Agreement. Jennifer Wojtowicz's offer of \$10,000 shall be considered the first bid, on the terms set forth in paragraph 37 of "Section II. Definitions" on page 8 and in the paragraph describing "Class 4 - Equity Interests of Debtor" of "Section III. Classification of Claims" on page 10.

Debtor must change this sentence to state the foregoing.

Accordingly,

IT IS ORDERED that no later than December 9, 2014, the Debtor must file a second amended combined plan and disclosure statement that is consistent with the terms of this Order.

IT IS FURTHER ORDERED that no later than December 9, 2014, the Debtor also must file a redlined version of the second amended combined plan and disclosure statement, showing the changes Debtor has made to the "First Amended Combined Plan and Disclosure Statement" filed December 1, 2014.

Signed on December 5, 2014

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge